

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 20CR302

Plaintiff,

May 28, 2020
10:10 a.m.

WILLIAM ELLIS,

Defendant.

TRANSCRIPT OF PRELIMINARY/DETENTION HEARING PROCEEDINGS
BEFORE THE HONORABLE DAVID A. RUIZ
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

THURSDAY, MAY 28, 2020, 10:10 A.M.

2 THE CLERK: This United States District
3 Court for the Northern District of Ohio is now open for
4 the transaction of business, the Honorable David A. Ruiz
10:10:40 5 presiding.

The Court calls Case Number 1:20MJ9138,
United States of America versus William Ellis.

THE COURT: Good morning.

9 Will counsel for the United States please
10 enter your appearance for the record?

11 MR. PIERCE: Good morning, Your Honor.

12 Kevin Pierce on behalf of the United States.

13 THE COURT: And will counsel for the
14 defense please enter an appearance for the record?

10:11:01 15 MR. FLEMING: Yes, Your Honor. Thank you.
16 Charles Fleming on behalf of Mr. Ellis.

17 THE COURT: And, sir, you are William
18 Ellis, is that correct?

19 THE DEFENDANT: Yes.

10:11:11 20 THE COURT: Mr. Ellis, you appeared before
21 me on May 20th of this year for an initial appearance.
22 At that time the Office of the Federal Public Defender
23 was appointed to represent you.

24 Is it your intention, Mr. Ellis, to
10:11:20 25 continue with your appointed counsel?

1 THE DEFENDANT: Yes.

2 THE COURT: Counsel and Mr. Ellis, we are
3 here today for a preliminary hearing and detention
4 hearing.

10:11:32 5 We are conducting this hearing via a
6 videoconference. Counsel for the United States and
7 counsel for the defense are appearing via
8 videoconference.

9 It's my understanding that Task Force
10:11:46 10 Officer Kopchak is also appearing via videoconference.

11 The defendant Mr. William Ellis is
12 appearing via videoconference. He's present in the
13 Northeast Ohio Correctional Center conference room.

14 We also have a representative from Pretrial
10:12:05 15 Services participating, and we have a court reporter
16 making a record of today's proceedings.

17 To confirm, AUSA Pierce, can you see and
18 hear not only me, but the other participants I've
19 identified?

10:12:20 20 MR. PIERCE: Yes, Your Honor.

21 THE COURT: And, Attorney Fleming, can you
22 see and hear me and the other participants?

23 MR. FLEMING: I can, Your Honor. Thank
24 you.

10:12:25 25 THE COURT: And, Mr. Ellis, can you also

1 see and hear not only me, but the other participants I've
2 identified?

3 THE DEFENDANT: Yes.

4 THE COURT: I'll indicate that under normal
10:12:36 5 circumstances, you all would be present with me here in
6 United States District Court. We would be conducting
7 this hearing in open court in my courtroom, but due to
8 the impact of Covid-19, we are conducting this hearing
9 via videoconference pursuant to the authority provided by
10:12:53 10 the CARES Act as well as the standing and general orders
11 issued by the Chief Judge of the Northern District of
12 Ohio.

13 Mr. Ellis, do you consent to proceeding
14 with this hearing via videoconference?

10:13:11 15 THE DEFENDANT: Yes.

16 THE COURT: And, Attorney Fleming, do you
17 consent to proceeding via videoconference?

18 MR. FLEMING: Yes, Your Honor.

19 THE COURT: And, AUSA Pierce, do you
10:13:18 20 consent to proceeding via videoconference?

21 MR. PIERCE: Yes, Your Honor.

22 THE COURT: And, Attorney Fleming, have you
23 had an opportunity to speak with Mr. Ellis since the
24 initial appearance in preparation of today's hearing?

10:13:32 25 MR. FLEMING: Yes, I have, Your Honor. And

1 I should note for the record that I am actually at this
2 point standing in for Darin Thompson. Mr. Thompson has
3 ultimately been given this case, but he was unable
4 to -- he had a conflict for purposes of today's hearing,
10:13:48 5 and I am doing the hearing for him.

6 THE COURT: Thank you for that
7 clarification, counsel.

8 But is the defense prepared to proceed at
9 this time with the hearing?

10:13:59 10 MR. FLEMING: Yes, Your Honor.

11 THE COURT: Mr. Ellis, before we proceed
12 any further, I'm going to ask you an initial question.

13 Are you presently under the influence of
14 any medication, drugs, alcohol, any substance that at
10:14:12 15 present would interfere or affect your ability to think
16 or understand?

17 THE DEFENDANT: No.

18 THE COURT: Attorney Fleming, do you have
19 any reason to question either your client's ability to
10:14:21 20 understand what's going on here today or his competency
21 to proceed in this matter?

22 MR. FLEMING: No, I do not, Your Honor.

23 THE COURT: Mr. Ellis, I will remind you
24 that you have the right to remain silent.

10:14:29 25 You are not required to make any statement

1 or to testify, and anything you say may be used against
2 you. If you start to make a statement, you may stop at
3 any time.

4 And you may also consult with your attorney
10:14:38 5 at any time.

6 Do you understand your right to remain
7 silent?

8 THE DEFENDANT: Yes.

9 THE COURT: Counsel and Mr. Ellis, I'll
10:14:49 10 also advise that during today's proceedings, I'll do my
11 best to call on each one of you by name, but if I have
12 not done so, I ask that you just identify yourself by
13 name so that way the court reporter can make an accurate
14 transcript of today's hearing.

10:15:07 15 Also, because we're appearing via
16 videoconference for this hearing, sometimes there is some
17 noise or feedback from open mics, so I ask that you all
18 mute your mics when you're not speaking. And at times I
19 may have to mute your mic as well if there is any noise
20 reverberation or issue with the feedback and the sound.

21 But if you're on mute, you should be able
22 to unmute yourself and speak.

23 If there's any issue, just raise your hand
24 and I will be able to see you and make sure that you have
10:15:43 25 full and ample opportunity to make any statement that

1 you'd like.

2 In addition, Mr. Fleming and Mr. Ellis, I
3 wanted to advise you that if at any point in time you'd
4 like to have a private attorney/client conference, just
10:15:57 5 make that request.

6 With the technology we have, we can place
7 the two of you into a separate breakout room where you
8 can have a private conference. The rest of us would stay
9 in this main videoconference and take a recess on the
10:16:09 10 record while you have an opportunity to have your private
11 attorney/client conference.

12 MR. FLEMING: Thank you, Your Honor.

13 THE COURT: Counsel and Mr. Ellis, as I
14 indicated, we're here today for a preliminary hearing and
10:16:21 15 a detention hearing.

16 We'll first address the matter of probable
17 cause and address the matter of detention, if necessary,
18 after first addressing the matter of probable cause.

19 With respect to the hearing itself, I do
20 have a copy of the Pretrial Services report, so if you
21 have any changes, corrections or modifications you'd like
22 the Court to consider with respect to the Pretrial
23 Services report, please let me know.

24 Also, I have been provided with copies of
10:16:59 25 the Government's and defendant's exhibits in advance of

1 this hearing. I have electronic versions of those, but
2 to the extent that you intend to use any of those
3 exhibits, if you would just identify them during the
4 hearing so that way I can make sure I have the correct
10:17:16 5 document in front of me.

6 And it's also my understanding that those
7 exhibits have been exchanged between counsel, but if
8 there's any issue there, AUSA Pierce or Attorney Fleming,
9 let me know and we can address that before we proceed any
10:17:30 10 further.

11 Okay?

12 MR. FLEMING: Yes. Thank you, Your Honor.

13 THE COURT: All right. And then with
14 respect to the hearing itself, counsel, if you would like
10:17:43 15 to -- or AUSA Pierce, do you intend to call any
16 witnesses, or proceed by way of proffer?

17 MR. PIERCE: Your Honor, I intend to call
18 Task Force Officer Kopchak.

19 THE COURT: Okay. And, Attorney Fleming,
10:17:55 20 do you intend to call any witnesses, or proceed by way of
21 proffer?

22 MR. FLEMING: Your Honor, we would be
23 proceeding by way of proffer and argument.

24 THE COURT: All right. At this time, since
10:18:03 25 we are doing the combined preliminary hearing and

1 detention hearing, counsel, you can include in the direct
2 and cross-examination of Officer Kopchak issues that
3 would address both preliminary hearing, probable cause,
4 and detention hearing issues so that way we don't need to
5 split the testimony.

10:18:41 10 MR. FLEMING: Thank you, Your Honor.

11 THE COURT: As well, Attorney Fleming, any
12 proffer that you reserve can address both the preliminary
13 hearing issues and detention hearing issues at the time,
14 and then I'll make an initial determination with respect
15 to whether, in fact, there's probable cause to support
16 the charges alleged against Mr. Ellis.

17 And then, if necessary, I'll hear any
18 additional argument that you have with respect to the
19 matter of pretrial detention.

10:19:07 20 MR. FLEMING: Okay.

21 THE COURT: AUSA Pierce, unless there's any
22 further initial issues to address, you may call your
23 first witness.

24 MR. PIERCE: Thank you, Your Honor.

10:19:20 25 The United States calls Task Force Officer

1 Don Kopchak.

2 THE COURT: Mr. Kopchak, please raise your
3 right hand.

4 Ms. Gallagher, would you please swear in
10:19:30 5 Mr. Kopchak?

6 DONALD KOPCHAK,

7 of lawful age, a witness called by the Government,
8 being first duly sworn, was examined
9 and testified as follows:

10:19:41 10 THE COURT: Officer Kopchak, your line was
11 on mute for a moment. Can you answer again?

12 THE WITNESS: I do.

13 THE COURT: You understand, Officer
14 Kopchak, that you're now under oath and your testimony is
10:19:53 15 subject to the pains and penalties of perjury?

16 THE WITNESS: I do.

17 THE COURT: AUSA Pierce, you may begin.

18 MR. PIERCE: Thank you, Your Honor.

19 DIRECT EXAMINATION OF DONALD KOPCHAK

20 BY MR. PIERCE:

21 Q. Can you state your name and spell your last for the
22 record?

23 A. Detective Donald Kopchak, K-O-P-C-H-A-K.

24 Q. What's your current occupation?

10:20:10 25 A. I am assigned to the City of Cleveland Division of

1 Police as a detective for the last 13 years.

2 I'm also assigned to the ATF as a task
3 force officer for -- it will be two years next week.

4 Q. As a task force officer with the ATF, what are your
10:20:26 5 current duties?

6 A. With the -- as a task force officer with the ATF,
7 my duties are to investigate federal crimes including
8 drug trafficking, felons in possession of firearms,
9 pretty much anything that we can go forward federally
10:20:47 10 with.

11 Q. Okay. Do you have any training in the field of
12 narcotics?

13 A. Yes.

14 Q. Like what?

10:20:52 15 A. Well, I graduated from the Cleveland Police
16 Academy. Shortly after that, I attended several drug
17 trafficking classes, basic narcotics school through HIDTA
18 in Brooklyn. I also went to an advanced narcotics school
19 in Dallas, Texas for a week.

10:21:13 20 I have attended undercover schools. I have
21 participated in numerous undercover operations and
22 handled confidential informants, things like that.

23 Q. What about firearms, do you have any training in
24 the field of firearms?

10:21:32 25 A. Yes. ATF sends me to -- or sent me to Washington,

1 D.C. for seven days for an ATF course which includes
2 firearms, the basics of firearms, how much they're worth,
3 trafficking in firearms, characteristic of an armed gun
4 man, things of that nature.

10:21:54 5 Q. Okay. Besides your 13 years with the Cleveland
6 Division of Police, do you have any other law enforcement
7 experience?

8 A. No.

9 Q. Okay. During your time as a detective with
10 Cleveland or as an ATF Task Force Officer, have you ever
11 testified as an expert?

12 A. No.

13 Q. Okay. I want to turn your attention now to May
14 18th of 2020.

10:22:15 15 Do you remember that?

16 A. Yes.

17 Q. Was the search warrant executed at 638 East 127th
18 Street?

19 A. Yes, it was.

10:22:24 20 Q. Is that the City of Cleveland, Ohio?

21 A. It is.

22 Q. Is that in the Northern District of Ohio?

23 A. It is.

24 Q. All right. Can you tell me what happened on May
25 18th, 2020?

1 A. We executed a Cuyahoga County search warrant with
2 the Cleveland SWAT unit.

3 I was notified two days prior from
4 Detective Yasenchack from the Cleveland Police
10:22:50 5 Department --

6 Q. I'm going to stop you there.

7 Could you spell that last name for us for
8 the record?

9 A. Sure. It's Y-A-S-E-N-C-H-A-C-K, and his badge is
10:23:03 10 2362.

11 Q. Okay. So continue.

12 A. He notified me that there was going to be a search
13 warrant and asked me to assist.

14 Q. Okay. So on the morning of May 18th, was the
10:23:17 15 search warrant actually executed?

16 A. It was.

17 Q. Was anyone home?

18 A. Yes. There was two occupants in the home.

19 There was Mr. William Ellis and a female.

20 Q. When you say "Mr. William Ellis," do you mean the
21 fellow here on the Zoom call with us?

22 A. Yes.

23 MR. PIERCE: Your Honor, identification for
24 the record?

10:23:39 25 THE COURT: The record would so note that

1 the witness has identified Mr. William Ellis appearing
2 through Northeast Ohio Correctional Center
3 videoconference.

4 BY MR. PIERCE:

10:23:49 5 Q. All right. So you know, police enter, they find
6 Mr. Ellis and a female, as you mentioned.

7 Where was Mr. Ellis when you arrived at the
8 home?

9 When I say "you," I mean officers in
10:24:01 10 general.

11 A. He was running upstairs in the hallway when SWAT
12 made contact with him.

13 Q. Where was he running towards?

14 A. The bathroom.

10:24:11 15 Q. Was there anything going on in the bathroom?

16 A. Numerous times SWAT had to get his attention to
17 almost gain control of him verbally.

18 Once they did that, they were able to
19 detain him, and they detained a female who was in the
20 bedroom.

21 And SWAT noticed that there were several
22 empty bags near the toilet as well as pills on the
23 bathroom floor and in a living room area -- or hall area.

24 Q. Okay. Was he eventually detained then?

10:24:44 25 A. He was.

1 Q. Okay. After his detention, was he provided his
2 Miranda warnings?

3 A. He was.

4 Q. Did he, during the time of the search warrant, did
10:24:53 5 he mention what was going on in the bathroom?

6 A. Yes, I actually advised him of his Miranda rights.
7 I actually explained to him who I was, that I was with
8 the ATF as a task force officer.

9 I asked him about if he was flushing
10:25:06 10 anything down the toilet, and at that time he explained
11 that he was just getting rid of some Percocets.

12 Q. Okay. Now, I want to turn your attention to the
13 search of the house.

14 Let's start in the upstairs bedroom.

10:25:19 15 Was that searched?

16 A. Yes, there was actually -- well, there was two
17 bedrooms, but one, one -- the third one was actually a
18 marijuana grow house.

19 Q. Okay. Let's talk about that.

20 10:25:33 What do you mean by "a marijuana grow
21 house"?

22 A. Inside the -- which would be a normal bedroom, was
23 approximately 15 plants. They had grow lights,
24 fertilizers, grow containers, heat lamps, humidity
10:25:50 25 thing -- humidity control, everything you need to

1 successfully grow marijuana.

2 Q. Okay. Anything else in that room?

3 A. No.

4 Q. You mentioned there were other bedrooms.

10:26:02 5 Was there anything else found in the
6 bedrooms upstairs?

7 A. Yes, the next bedroom was what we considered
8 Mr. Ellis's bedroom.

9 We --

10:26:10 10 Q. Before you get too far ahead, why, why did you
11 consider it his bedroom?

12 A. His wallet was in there with his driver's license.
13 Clothing was in there. He's a large gentleman. The
14 clothing matched his posture. All men's clothes in
10:26:30 15 there.

16 The other bedroom had all female clothes.

17 Basically with the driver's license and
18 everything else, as well as the other female in the
19 residence stated that that was his bedroom.

20 Q. Okay. Was anything found in that room?

21 A. Yes.

22 Q. What?

23 A. Inside that bedroom in the closet was a jacket.
24 Inside the jacket was a large bag of suspected Fentanyl.

10:27:04 25 Also, we located Mr. Ellis's wallet with

1 his driver's license, some paperwork with his name on it,
2 and next to that wallet with his driver's license was a
3 loaded Smith & Wesson revolver.

4 Q. When you say "Next to the wallet," what do you
10:27:24 5 mean?

6 A. So right -- if you're looking at the bed, to the
7 left of the bed was, like, a little makeshift nightstand
8 which is what the wallet was on with some paperwork.

9 And then the firearm was in between the
10:27:39 10 nightstand and the bed, as if you were laying there you
11 could just reach and grab the revolver.

12 Q. So if you were laying in bed, about how far away
13 from the bed? Was it within arm's reach?

14 A. Yes, it was.

15 Q. Would he have to get --

16 A. Yes, it was actually almost touching the bed.

17 Q. Anything else found in that room; any ammunition or
18 anything like that?

19 A. No. The -- there was ammunition located throughout
10:28:03 20 the home, but I don't believe there was any additional
21 ammunition in that bedroom.

22 Q. Was the gun loaded?

23 A. Yes, it was.

24 Q. Let's turn to the living room.

10:28:14 25 Was anything found in the living room?

1 A. Yes, in the living room where Mr. Ellis was
2 actually sitting, where I advised him of his Miranda
3 rights, I located a magazine with 17 rounds in it.

4 That's -- shortly after I located that,
10:28:28 5 that was within the first couple minutes of being in the
6 home, I asked Mr. Ellis if there was a firearm upstairs
7 or in his bedroom, and he stated he couldn't remember.

8 I asked him why he would have another
9 magazine just sitting out, and he did not answer that
10:28:46 10 question.

11 However, through -- through the search of
12 the living room, officers located numerous boxes of
13 different ammunition in the living room. They located a
14 box of .556 ammunition, a box of .762 ammunition, a box
15 of .9 millimeter ammunition as well. And then an
16 additional bag of .556 rounds also located in the living
17 room.

18 Q. What about drug paraphernalia, was there any drug
19 paraphernalia found?

20 A. Once you made your way into the kitchen, which was
21 located in the rear of the home, it was set up as to
22 manufacture drugs or to step on drugs.

23 And by that I mean that there was digital
24 scales with heavy residue throughout the kitchen. There
10:29:42 25 was blender with residue. There was -- next to the

1 blender there was a box of Benefiber which is being used
2 to color the Fentanyl.

11 Also there was a press. It was a little
12 press, approximately, I don't know, eight inches long
13 that would be used to press heroin.

14 The reason you do that is to -- once you
10:30:31 15 blend up the cut and everything else, you're able to
16 repress it so it appears that it's -- has not been
17 stepped on.

18 Q. Why would somebody not want stepped-on heroin?

19 A. Because you're losing the potency of what you're
10:30:47 20 purchasing, so if you're getting almost pure Fentanyl or
21 Carfentanil, every time you step on it you're losing that
22 little bit, or if you're buying heroin it would be the
23 same thing.

24 Q. All these items you mentioned, you mentioned there
10:31:02 25 was what appeared to be Fentanyl upstairs, this drug

1 paraphernalia with the residue, et cetera, were all these
2 items sent to the laboratory?

3 A. They were.

4 Q. Are the results back yet?

10:31:12 5 A. They are not. I just checked this morning right
6 before the conference, but they are not back yet.

7 The only results that we have back are from
8 our prior investigation of Mr. Ellis of the drugs we
9 recovered.

10:31:23 10 Q. What -- what do you mean by that?

11 A. On May 11th of 2020, Detective Yasenchack conducted
12 surveillance on Mr. Ellis's home and was able to notice a
13 large volume of traffic coming and going from the home.

14 The last vehicle that came into the
15 residence, Mr. Ellis was observed letting them in the
16 home. They then left Mr. Ellis's home. They were then
17 stopped, and they were able -- they were in possession of
18 suspected Fentanyl.

19 Those occupants were interviewed and they
20 were able to describe Mr. Ellis. They know him as Blaze.
21 They supplied a phone number that they contacted him on.
22 And they were shown a video -- not video -- a BMV photo
23 of Mr. Ellis, and they were able to positively identify
24 him as Mr. Ellis.

10:32:31 25 Those drugs that were confiscated were sent

1 to the lab, and it should be noted that those drugs were
2 also -- the suspected heroin was a yellowish color
3 similar to the same exact color that was located in
4 Mr. Ellis's coat.

10:32:49 5 Those labs came back, and it was a mixture
6 of heroin, Carfentanil, Fentanyl, cocaine, Tramadol,
7 4-ANPP which is a Schedule II, and Gabapentin which is a
8 nonschedule which would be cut.

9 Q. Okay. So the May 11th Fentanyl was very similar in
10 color and look as to what was recovered on the 18th; fair
11 to say?

12 A. It was, yes.

13 Q. Okay. Does Mr. Ellis have any prior convictions?

14 A. He does.

10:33:26 15 Q. Like what?

16 A. Mr. Ellis has a prior conviction for gross sexual
17 imposition, kidnapping, felonious assault, and drug
18 trafficking.

19 Q. Did that make him prohibited from possessing or
20 owning a firearm?

21 A. It does.

22 Q. You mentioned gross sexual imposition.

23 Does that mean he's a registered sex
24 offender?

10:33:50 25 A. It is.

1 Q. During -- as a registered sex offender, does he
2 have to provide an address?

3 A. He does.

4 Q. Do you know what that address is?

10:33:58 5 A. He supplied 638 East 127th.

6 Q. Okay. You mentioned, I think -- and if you didn't,
7 I apologize -- you mentioned a vehicle that was
8 registered or a vehicle of Mr. Ellis's.

9 Do you know of his vehicle?

10:34:14 10 A. Yeah, the original complaint that we received
11 that -- not me -- that Detective Yasenchack received in
12 April stated that the person that's selling the drugs
13 drives Ford Explorer with Ohio plate of HYH 8894.

14 When Detective Yasenchack ran that plate,
15 it did come back to William Ellis.

16 And on May 12th, I assisted Detective
17 Yasenchack and I did see that vehicle there. However,
18 during the search warrant, that vehicle was not present.

19 Q. Do you know where that vehicle is registered to,
20 what address?

21 A. I don't believe I have that information in front of
22 me.

23 Q. That's fine.

24 Detective, I want to -- I have five
10:35:15 25 exhibits that I want to sort of go through, Exhibits A

1 through E.

2 I provided them to you earlier and you sent
3 them to me. I know this is a little awkward, but Exhibit
4 A, that's Detective Yasenchack's report.

10:35:27 5 Do you remember seeing that?

6 A. Yes.

7 Q. Have you reviewed it?

8 A. I have.

9 Q. Is it a fair and accurate copy of his report?

10:35:36 10 A. It is.

11 Q. Okay. In that report, does he mention when his
12 search warrant was submitted to the Cuyahoga County
13 Prosecutor's Office?

14 A. Yes.

10:35:51 15 Q. When?

16 A. He submitted it to -- he drafted the warrant and
17 submitted it on May 12th to the prosecutor for review.

18 Q. Okay. I want to turn your attention to Exhibit B.

19 You provided me and I provided counsel with
10:36:16 20 four photographs.

21 MR. PIERCE: Your Honor, with permission,
22 could I share my screen? It may make this process a
23 little easier if I could show the photo.

24 THE COURT: Yes, you may.

10:36:27 25

1 BY MR. PIERCE:

2 Q. Detective, I'm going to draw your attention to the
3 screen.

4 Is that Exhibit B? Detective, do you see
10:36:40 5 that?

6 A. Yes, I do.

7 Q. What do you see here?

8 A. Those, that is the -- I refer to as a bedroom, but
9 it's the grow house. Those are pictures of the plants,
10:36:51 10 the fertilizer.

11 To the left you see the humidifier or the
12 humidifier controller.

13 And then right above there was all the heat
14 lamps.

10:37:04 15 Q. Is this photo a fair and accurate copy of the
16 bedroom of Mr. Ellis's house on May 18th, 2020?

17 A. Yes.

18 Q. Did you see my screen change then, Detective?

19 A. It did not.

20 Q. Okay. One second.

21 Detective, did my screen just change to
22 Exhibit C?

23 A. Yes.

24 Q. Could you describe what you see here in Exhibit C?

10:37:41 25 A. That is the bag of suspected Fentanyl that was

1 located in the coat.

2 It's removed from the coat to take a photo
3 to depict what it looks like.

4 Q. Okay. Is it a fair and accurate copy of what was
10:37:57 5 seized from the coat on May 18th, 2020?

6 A. Yes.

7 Q. Turning your attention back to the screen here to
8 Exhibit D, what do you see here?

9 A. That is Captain Kane -- that's spelled K-A-N-E.
10:38:21 10 She is holding the coat which the Fentanyl, suspected
11 Fentanyl, bag of Fentanyl was located in.

12 Q. You mentioned earlier that Mr. Ellis is a big
13 individual.

14 What stands out about the size in this
10:38:34 15 photograph?

16 A. Captain Kane is very tall as well, above six foot,
17 and she's holding the coat up. As you compare, it's a
18 very large coat that would -- that would match
19 Mr. Ellis's description or posture, I guess.

20 Q. About how tall is Mr. Ellis?

21 A. He's tall. He's six-five.

22 Q. Okay.

23 A. Six-four, six-five.

24 Q. All right. Turning your attention to the screen
10:39:05 25 again, Exhibit E.

1 Do you see this?

2 A. Yes.

3 Q. What do you see here?

4 A. That is the revolver that I stated earlier that was
5 next to the bed.

6 The bed is actually moved to get a better
7 photo of the gun.

8 Q. So there's a brown object on the left.

9 What is that?

10:39:25 10 A. That's the nightstand that I spoke of that -- I
11 don't think it's an actual nightstand. It was more like
12 a make-shift nightstand.

13 Q. There appears to be either a covering or a plastic
14 sheet on the right.

What is that? Is that the bed?

16 A. Yes.

17 Q. So does it -- how did it get in that position?

18 A. The bed?

19 Q. Yes.

10:39:48 20 A. It was moved when -- throughout the search.

21 I wasn't present for the search of that
22 bedroom, just Captain Kane was and Detective Yasenchack,
23 but the bed was moved to check under the bed, and that's
24 when the bed was moved and the firearm was located.

10:40:05 25 Q. So the firearm was found in that spot when the bed

1 was moved, is that fair to say?

2 A. Correct, to get a better photo of it.

3 Q. All right. So is this photo a fair and accurate
4 depiction of where the gun was found on May 18th of 2020?

10:40:20 5 A. It is, yes.

6 MR. PIERCE: All right. Your Honor, I move
7 for the admissions of Exhibits A through E.

8 THE COURT: Attorney Fleming, any
9 objections?

10:40:30 10 One moment. Attorney Fleming, I believe
11 your mic is on mute.

12 Any objections, Attorney Fleming?

13 MR. FLEMING: No objection, Your Honor.

14 I apologize.

10:40:40 15 THE COURT: All right. Government's
16 Exhibits A through E are admitted without objection.

17 AUSA Pierce, you may continue.

18 MR. PIERCE: Your Honor, that's all I have.

19 THE COURT: Attorney Fleming, any
10:40:57 20 cross-examination?

21 MR. FLEMING: Yes, Your Honor, if I may.

22 CROSS-EXAMINATION OF DONALD KOPCHAK

23 BY MR. FLEMING:

24 Q. Detective Kopchak, you did the affidavit in this
10:41:06 25 case, is that correct?

1 A. Yes, sir, I did.

2 Q. Okay. And some of the stuff you talk about in the
3 affidavit relates to surveillance that was conducted by
4 Officer Kop -- I mean, I'm sorry, Officer Yasenchack on
10:41:20 5 May 11th, is that correct?

6 A. Yes, sir.

7 Q. Okay. Now, were you present for that surveillance?

8 A. No, sir.

9 Q. Okay. So all of the information you got with
10:41:30 10 regard to that surveillance came from Officer Yasenchack?

11 A. Correct.

12 Q. Okay. Was he assisted by other officers?

13 A. I do not know.

14 Q. Okay. Part of the information he had leading him
10:41:44 15 to the surveillance of that house came from a
16 confidential informant.

17 Do you recall that?

18 A. I do.

19 Q. Okay. Was that a paid informant, or was that
10:41:52 20 someone who was looking to reduce a sentence?

21 A. I don't recall.

22 Q. Okay.

23 A. I can't remember if the CI has a case, or if his
24 case is already completed.

10:42:13 25 I can't remember.

1 Q. Okay. Did that person ever do any sort of
2 controlled buy that was allegedly from Mr. Ellis?

3 A. I'm sorry, something happened with the audio. I
4 couldn't hear.

10:42:27 5 THE COURT: Could you repeat the question,
6 Mr. Fleming? There was some static in your question.

7 BY MR. FLEMING:

8 Q. Sorry. I asked whether that person was -- ever did
9 a controlled buy, is alleged to have ever done a
10 controlled buy from Mr. Ellis.

11 A. Not to my knowledge, no.

12 Q. Okay. So the person directed Officer Yasenchack to
13 Mr. Ellis, but to your knowledge never did any sort of
14 transaction for Officer Yasenchack with Mr. Ellis?

10:42:52 15 A. Correct.

16 You're referring to the original CI --

17 Q. Yes.

18 A. -- who supplied information?

19 Q. Yes, that led to the surveillance on May 11th.

10:43:01 20 A. Correct.

21 Q. Okay. Now, you know that Officer Yasenchack was
22 involved in a previous case with Mr. Ellis, correct?

23 A. Just recently, yes.

24 Q. Okay. And you actually mentioned it in your
10:43:14 25 affidavit, that that case is pending on appeal, correct?

1 A. Correct.

2 Q. Okay. Now, are you -- are you aware that there was
3 a suppression hearing in that case?

4 A. I have no knowledge of the case.

10:43:28 5 AUSA Pierce updated me this morning, but
6 before this morning I had no prior knowledge, no.

7 Q. Okay. So all you knew at the time you did this
8 affidavit was that it was your understanding that that
9 case was pending?

10:43:43 10 A. Yes, sir.

11 Q. Okay. Where did you get that information from?

12 A. I believe Detective Yasenchack as well as Cuyahoga
13 County Clerk of Courts.

14 Q. Okay. And that, up until today, that was the only
15 information you knew about that case?

16 A. Correct.

17 Q. Okay. When you -- what -- well, let me back up.

18 When you learned information today, did you
19 learn that that appeal has actually been dismissed?

20 A. I did.

21 Q. Okay. And did you learn what the basis of that
22 appeal was?

23 A. No. I don't know anything about the case. I
24 wasn't present.

25 Q. And did you learn that that appeal was actually

1 dismissed on April 22nd of this year?

2 A. I wasn't told the exact date, but I was told it was
3 dismissed.

4 Q. Okay. Let's talk about the surveillance that
10:44:39 5 Officer Yasenchack did on the 11th.

6 Did he take photographs of what he
7 surveilled?

8 A. I do not know.

9 Q. Do you know if he took video of what he surveilled?

10:44:52 10 A. I don't believe so.

11 We -- that's not a -- that wouldn't be
12 something that would be a common practice for the Fifth
13 District vice. We don't have the capability to video
14 anything. We don't have that type of equipment.

10:45:09 15 Q. Did other officers assist with regard to that
16 surveillance?

17 A. I don't know. I wasn't present.

18 Q. Okay. He didn't give you that information?

19 A. No. I didn't -- I didn't ask.

20 Q. Okay. But you indicated at some point in your
21 affidavit you said that originally two white males
22 entered and at some point they left, correct?

23 A. I'm pulling up that paragraph right now.

24 Q. Okay. Take your time.

25 Specifically I refer your attention to

1 Paragraph 13 of the affidavit.

2 A. Yep. I just got there.

3 Go ahead, what was the question?

4 Q. I said eventually two white males entered the
10:46:03 5 residence and then at some point they left, correct?

6 A. Correct.

7 Q. Okay. And they were not stopped by the Cleveland
8 Police Department at all, to your knowledge?

9 A. Not to my knowledge, no.

10 Q. Okay. So we have no idea what -- what their
11 business was at that residence that day?

12 A. No. I don't -- no.

13 Q. Okay. And again, after them, after they entered, a
14 female entered and at some point left, correct?

15 A. Yes.

16 Q. Okay. And she was not stopped by the Cleveland
17 Police Department for anything that day?

18 A. Not to my knowledge.

19 Q. So we have -- we do not know as we sit here what
10:46:42 20 her business was in that residence that day, correct?

21 A. Correct.

22 Q. All right. And while we're on that topic, how many
23 people were living at the residence?

24 A. What residence?

10:46:53 25 Q. The residence that was being surveilled, the

1 residence that allegedly Mr. Ellis was staying at.

2 A. Mr. Ellis.

3 q. He's the only person that was living there?

4 A. To my knowledge.

10:47:06 5 Q. Okay. You said that when officers made entry, his
6 girlfriend was there.

7 Do you recall stating that?

8 A. I stated a female, yes.

9 Q. Okay. Do you know if she was living there?

10:47:17 10 A. During the interview of her, she stated that she
11 was not living there. That she was keeping some stuff
12 there until she could go somewhere else.

13 Q. Okay. So she was -- if she's keeping stuff there,
14 then she stays there on and off apparently, correct?

10:47:37 15 A. I didn't ask that.

16 Q. She -- okay. Well, she told you she's keeping some
17 stuff there?

18 A. Yeah. She had minor stuff there. She said that
19 she was -- I didn't ask the exact date or time she got
20 there, but yes, she had some clothes there.

21 Q. Okay. Then let's go back to the people who are
22 going in and out of the residence on the 11th.

23 A. Okay.

24 9. Finally, two people entered and came out.

Those were the last two people that went in.

1 that day.

2 Do you recall that?

3 A. Yes.

4 Q. Okay. Were they two males, two females, male and
10:48:11 5 female? What was that situation?

6 A. Well, we don't supply that information and we keep
7 that vague to protect them.

8 Q. Okay. Because they cooperated?

9 A. Correct.

10 Q. Okay. Ultimately drugs were found on them, right?

11 A. Correct.

12 Q. Okay. Were they charged with a crime?

13 A. I don't know if they were or not. If they -- I can
14 tell you what past practice is, but I can't tell you what
10:48:41 15 Detective Yasenchack did.

16 Q. You don't know what happened with those two people?

17 A. No. I wouldn't ask either. That's not my -- what
18 he does with his cases are his prerogative.

19 Q. At some point you know that Detective Yasenchack
10:48:57 20 went and got a search warrant, correct?

21 A. Yes.

22 Q. Okay. Have you reviewed that warrant?

23 A. Yes.

24 Q. Okay. Do you have that there with you?

10:49:05 25 A. I don't believe so. I did give it to AUSA Pierce,

1 though.

2 Q. Okay.

3 A. I can check if you -- if you want to wait. I
4 don't -- I had to work from home today, I apologize. Our
10:49:21 5 office is being disinfected.

6 MR. PIERCE: If I can jump in real quick,
7 Charles, I can e-mail it to you real quick, if you don't
8 mind.

9 MR. FLEMING: That's fine. That's fine.

10:49:30 10 Take your time.

11 THE DEFENDANT: Could I say something to my
12 attorney real quick in private?

13 THE COURT: One -- one moment, Mr. Ellis.

14 Attorney Fleming, while AUSA Pierce e-mails
10:49:41 15 the document to Officer Kopchak, we'll take a brief
16 recess right now if you'd like, Attorney Fleming, or if
17 you'd like to proceed with your questioning, we can take
18 a recess after.

19 MR. FLEMING: I can take -- Judge, I can
20 take a couple minutes and talk to him right now, if the
21 Court is amenable to that.

22 THE COURT: Okay. Let's go ahead and take
23 a brief recess right now.

24 Ms. Gallagher, if you could please place
10:50:08 25 Attorney Fleming and Mr. Ellis into a separate breakout

1 room right now, we will take a brief recess.

2 THE CLERK: Yes.

3 (Recess taken).

4 THE COURT: All right. Counsel and
10:52:46 5 Mr. Ellis, we're back on the record.

6 Attorney Fleming, have you had sufficient
7 time to speak with Mr. Ellis?

8 MR. FLEMING: Yes, I did, Your Honor.

9 THE COURT: All right. Are you ready to
10:52:53 10 proceed then?

11 MR. FLEMING: We are, Your Honor.

12 THE COURT: Okay.

13 MR. FLEMING: Thank you.

14 BY MR. FLEMING:

10:52:59 15 Q. Officer Kopchak, do you have that warrant with you
16 now?

17 A. I do. Go ahead.

18 MR. FLEMING: Okay. And, Judge, for the
19 record, I'm referring to Defendant's Exhibit D as in
10:53:07 20 David.

21 THE COURT: All right. Give me one moment
22 to pull that up, counsel.

23 MR. FLEMING: Thank you.

24 THE COURT: Okay. Attorney Fleming, I have
10:53:42 25 it.

1 MR. FLEMING: Okay. Thank you.

2 BY MR. FLEMING:

3 Q. Officer Kopchak, referring your attention
4 to -- well, first off, this is the search warrant that
10:53:48 5 was executed on May 18th, correct?

6 A. Yes, sir.

7 Q. Okay. And, sir, looking at the second page of the
8 warrant itself, it shows the Judge having signed it, et
9 cetera, correct?

10:54:03 10 A. Yes, sir.

11 Q. Okay. And the date of that signing appears to be
12 May 14th of 2020, correct?

13 A. Yes, sir.

14 Q. Okay. Now, just above that, do you see that last
10:54:14 15 paragraph of the warrant where it starts with
16 "Therefore"?

17 A. Yes.

18 Q. Okay. And do you see that it says, "You are hereby
19 commanded in the name of the State of Ohio with the
20 necessary and proper assistance to serve this warrant in
21 the day or night season and search forthwith within three
22 days of the date hereof"?

23 Do you see that?

24 A. I do.

10:54:41 25 Q. Now, by my calculations, three days would take you

1 to May 17th, correct?

2 A. For -- there's case law on this, and the
3 weekends --

4 Q. I just asked you -- I'm just asking you --

10:54:54 5 A. No.

6 Q. -- three days doesn't take you to May 17th?

7 A. Not for us, no.

8 Q. Okay. How far does three days take you?

9 A. The case law explains that when you're off or
10 unable to execute that warrant on your days off, that on
11 the weekends, if you're not employed, do not count.

12 So the warrant was signed on the 14th.

13 Saturday and Sunday would not count to execute the
14 warrant. So then we executed it Monday morning.

10:55:20 15 Q. Okay. But in this, all this warrant says is "Three
16 days from the date hereof," correct?

17 It doesn't say "Three business days"?

18 A. It's -- the language in there is within three days,
19 and there's numerous case laws that I don't have with me,
20 but I have discussed this before and shown, also.

21 Q. Okay. Now, you indicated that, among other things,
22 a gun was found in this residence, correct?

23 A. I did.

24 Q. All right. Now, has that gun -- has a trace been
25 done on that gun?

1 A. It has.

2 Q. Okay. And did it trace back to someone?

3 A. It's not completed yet.

4 Q. Oh, okay. So the trace has not been done?

10:56:09 5 A. I sent -- it has. I sent it in the same day.

6 Q. Okay. So you've asked for it. It has not been
7 completed?

8 A. Yes, sir.

9 Q. Okay. And has fingerprint or DNA testing been done
10:56:21 10 on this gun?

11 A. Yes, sir.

12 Q. Okay. And has that been completed?

13 A. I swabbed it, yes, for DNA.

14 Q. Okay. And were fingerprints found?

10:56:31 15 A. You don't do both.

16 Q. Okay. But -- okay. You -- so you say you swabbed
17 it for DNA?

18 A. Yes, sir.

19 Q. Okay. And did you locate DNA on the gun?

10:56:43 20 A. Well, I would need a comparison. I would type a
21 search warrant for Mr. Ellis's DNA, and then we would
22 collect that DNA.

23 Q. Okay.

24 A. And then we would take that DNA with the gun swab,
10:56:56 25 and then it would go to BCI in Richfield, and then it

1 takes approximately three weeks or so and they would give
2 me the results.

3 Q. So based on what you've just told us then that
4 process has not been done and completed yet?

10:57:13 5 A. No, the standard has not been collected.

6 Q. Okay. And are your answers the same with regard to
7 the ammunition, no fingerprint testing or DNA testing as
8 yet?

9 A. We wouldn't swab the DNA or fingerprint or DNA. A,
10 the DNA -- or the ammo was in boxes.

11 Q. Okay.

12 A. It was in a closet. And our policy at ATF is we
13 don't swab boxes of ammunition.

14 Q. Okay. And what about the drug press?

10:57:44 15 A. No. We wouldn't --

16 Q. The drug press that was found?

17 A. Cuyahoga County Examiner's Office, when items are
18 located inside someone's home, there has to be some sort
19 of exigent circumstances to -- for them to test that DNA
20 such as a homicide or a drug overdose, because their
21 explanation is that if it's their home, their DNA is
22 going to be in the home and the item then would be --
23 whatever scientific word they use -- it would be diluted
24 or there would be DNA already on it.

10:58:19 25 So they don't -- where we get our DNA done

1 for drugs, they wouldn't do that.

2 Q. Okay. But you did indicate swabbing some items for
3 DNA, right?

4 A. Yeah, a firearm is different. We are able to -- we
10:58:33 5 have an agreement with BCI to do the standards for felons
6 in possession through ATF.

7 Q. All right. Do you know who the owner of the house
8 is?

9 A. I -- not offhand, I do not.

10 Q. Okay. Is that information -- do you have that
11 information somewhere?

12 I'm not asking you to get it, but do you
13 have that information somewhere?

14 A. I believe we, when we do our -- when Detective
10:59:02 15 Yasenchack does his pre-entry forms for swab, it requires
16 the Cuyahoga County Auditor's page, so he would have that
17 then.

18 Q. Okay. And you don't know that information as you
19 sit here today?

20 A. Not offhand, I do not.

21 Q. Do you know -- so if you don't know that
22 information, I imagine you don't know what contact they
23 have with the house?

24 A. Who?

25 Q. The owner of the house.

1 A. I don't understand your question.

2 Q. You said -- you said that you don't know who the
3 owner of the house is, correct?

4 A. Correct.

10:59:34 5 Q. Okay. And assuming, first of all, assuming that
6 it's someone other than Mr. Ellis, you don't know what
7 contact they have with the house, correct?

8 A. Correct.

9 Q. All right. Now, you said that the female that was
10 there said to you or another officer that that's his
11 bedroom, is that correct?

12 A. Yes.

13 Q. Okay. Did that tend to indicate to you that other
14 bedrooms in the house belonged to other individuals?

11:00:05 15 A. No, not necessarily.

16 Q. Okay. Could mean that, though, correct?

17 A. No, not necessarily.

18 Q. Okay. You said there was a bag of suspected
19 Fentanyl.

11:00:18 20 Do you recall that?

21 A. Yes.

22 Q. Okay. Has that been tested?

23 A. It was sent to the lab. I should either get
24 results today or tomorrow.

11:00:26 25 Q. Okay. So the tests --

1 A. The holiday -- no, the holiday set everything back
2 one day.

3 Q. Okay. Now, do you have any information to indicate
4 that Mr. Ellis is not a lifelong resident of the City of
11:00:43 5 Cleveland?

6 A. That he's not a lifelong resident?

7 Q. That's correct.

8 A. He lived in --

9 Q. Do you have any --

11:00:54 10 A. I know his driver's license has him living in
11 Richmond Heights; not in Cleveland.

12 Q. Okay. So let me rephrase the question.

13 Do you have any information to indicate
14 that he's not a lifelong resident of the Northern
11:01:05 15 District of Ohio?

16 A. Oh, no, not to my knowledge.

17 I don't have his full report here, but
18 nothing that stuck out to me, no.

19 Q. Okay. And you don't have any information to
20 contradict the fact that he was born and raised here in
21 Cleveland or in the Northern District of Ohio?

22 A. I'll agree with you, if that's what you're saying.

23 Q. Well, I'm just asking if you have any information
24 that contradicts that.

11:01:27 25 A. Oh, no, I don't.

1 Q. Okay. And you, do you have any information that
2 contradicts that he has strong ties in terms of family to
3 the Northern District of Ohio?

4 A. He spoke of his mom. That's about it.

11:01:45 5 Q. You don't have any information to contradict that?

6 A. No.

7 Q. Okay.

8 MR. FLEMING: Your Honor, I have no further
9 questions.

11:01:56 10 THE COURT: AUSA Pierce, any redirect?

11 MR. PIERCE: No, Your Honor.

12 THE COURT: All right. Officer Kopchak,
13 you're now off the witness stand.

14 (Witness excused).

11:02:18 15 THE COURT: AUSA Pierce, any additional
16 witnesses?

17 MR. PIERCE: No.

18 THE COURT: Any additional proffer for the
19 Court to consider before I turn to --

11:02:31 20 MR. PIERCE: I would just proffer the
21 Pretrial report, Your Honor, which I know you stated you
22 already have.

23 THE COURT: I do have it. One moment.

24 AUSA Pierce, before I turn to Attorney
11:03:26 25 Fleming, I'll note in the criminal complaint the

1 defendant was accused of violating 18, U.S.C., Section
2 922(g), possession of a firearm by a convicted felon.

3 MR. PIERCE: Correct.

4 THE COURT: Do you have any additional
11:03:42 5 information to proffer with respect to the firearm and/or
6 the ammunition that was referenced during the examination
7 of the witness?

8 MR. PIERCE: That being the interstate
9 commerce, is that your question, Judge?

11:03:59 10 THE COURT: My question was do you have any
11 additional information to proffer with respect to the
12 firearm and/or the ammunition?

13 MR. PIERCE: No.

14 THE COURT: Any information that would
11:04:09 15 indicate that it was -- has transferred or would in any
16 way affect interstate commerce?

17 MR. PIERCE: Not -- if I could recall
18 Detective Kopchak, he mentioned the make and model of it.

19 I could simply ask him a question about
11:04:26 20 Smith & Wessons, if permitted to reopen the questioning.

21 THE COURT: Any objection, Attorney
22 Fleming?

23 MR. FLEMING: No objection, Your Honor.

24 THE COURT: Mr. Kopchak, you are back on
11:04:37 25 the witness stand.

1 Do you understand that your testimony is
2 still subject to the pains and penalties of perjury if
3 you do not tell the truth?

4 THE WITNESS: I do.

11:04:47 5 THE COURT: AUSA Pierce, you may proceed.

6 | REDIRECT EXAMINATION OF DONALD KOPCHAK

7 BY MR. PIERCE:

8 Q. Detective Kopchak, you heard some questioning and
9 some testimony about the Smith & Wesson.

11:04:56 10 To your knowledge, does the
11 Smith & Wesson -- do you know where it's manufactured?

12 A. The Smith & Wesson is not manufactured in the State
13 of Ohio, and I confirmed that with Special Agent Briggs
14 from the ATF who is our nexus expert. He examined the
15 firearm.

16 Q. So as it compares to interstate commerce, since
17 it's not manufactured in Ohio, what does that mean?

18 A. That it crossed state lines in order to make it to
19 Ohio.

11:05:24 20 And as far as ammunition goes, there is no
21 ammunition made in Ohio.

22 Q. In general, meaning there is no ammunition
23 manufactured here in the State of Ohio at all?

24 A. Correct.

11:05:36 25 Q. So all the ammunition that was found, you mentioned

1 .556, I think, .9 millimeter and --

2 A. .762 rounds.

3 Q. There you go.

4 None of those were manufactured in the
11:05:52 5 State of Ohio?

6 A. Correct.

7 MR. PIERCE: Your Honor, that's all I have.

8 THE COURT: Attorney Fleming, any
9 cross-examination based upon that limited redirect?

11:06:01 10 MR. FLEMING: No cross, Your Honor.

11 THE COURT: All right. Mr. Kopchak, you
12 are now free to step down from the witness stand.

13 (Witness excused) .

14 THE COURT: Anything further for the Court
11:06:10 15 to consider, AUSA Pierce?

16 MR. PIERCE: No.

17 THE COURT: Okay. Attorney Fleming,
18 any -- you indicated you don't intend to call any
19 witnesses on direct examination, but any proffer that you
11:06:21 20 would have for the Court to consider?

21 MR. FLEMING: Yes, Your Honor.

22 First of all, I would proffer my four
23 exhibits, Exhibits A through D.

24 Exhibit A is a State suppression hearing
11:06:31 25 transcript. I didn't -- the transcript is relatively

1 ancillary to this matter, so I didn't submit the
2 transcript of both hearings.

3 One hearing was the hearing where they
4 actually took testimony. The other hearing, it was just
11:06:44 5 the Judge's finding on the suppression hearing.

6 And I thought that was significant because
7 some of the information in this affidavit was provided by
8 Officer Kopchak through -- I mean by Officer Yasenchack
9 through Officer Kopchak.

11:06:59 10 And in that case, the Judge specifically
11 suppressed evidence with regard to a prior case involving
12 Officer Kopchak and Mr. Ellis. That was the 2019 case
13 that Mr. -- Officer Kopchak referred to, and the Court
14 specifically found that Officer Yasenchack was not
11:07:18 15 credible.

16 The Court suppressed all of the evidence.
17 That is the matter that went up to the Court of Appeals.

18 The next exhibit is Exhibit B, which is the
19 Court of Appeals' dismissal of that matter, and
11:07:32 20 apparently it was dismissed because the Government didn't
21 timely file their appeal.

22 And then, finally, Exhibit C is the State's
23 ultimate dismissal of that matter on the Government's
24 motion.

11:07:46 25 Exhibit D, and I guess this is something

1 Mr. Thompson will have to look into, Exhibit D is a
2 search warrant in this case, and specifically the issue
3 with regard to the search warrant is, in fact, the fact
4 that it says it's to be executed within three days. It
11:08:00 5 doesn't say three business days. Doesn't give any sort
6 of qualification as to when it's to be executed. And
7 it's actually executed four days after it's issued.

8 Now, again, whether or not that becomes a
9 suppression issue, I guess time will tell. I know this
11:08:16 10 is not a suppression hearing, and I understand that. But
11 I thought that that's something that the Court should at
12 least consider.

13 We would also proffer --

14 THE COURT: Attorney Fleming, before you
11:08:26 15 move on.

16 MR. FLEMING: Sure.

17 THE COURT: You -- you referenced the
18 particular section of the search warrant in the direct
19 examination -- sorry -- the cross-examination of Officer
11:08:37 20 Kopchak, but for the record can you identify the
21 particular paragraph --

22 MR. FLEMING: Sure.

23 THE COURT: -- and page number you were
24 referring to?

11:08:43 25 MR. FLEMING: Yes, Your Honor. It's Page 2

1 of the actual warrant, and that -- again that's Exhibit
2 D, and on that page it says -- it has the Judge signing
3 it, which is the date is May 14th, and it indicates
4 without qualification that it should be served or
11:09:12 5 executed within three days thereof.

6 And it does not say "three business days."
7 It does not say "excluding days off" or what have you
8 because I don't even know what that would mean because
9 there are officers that can execute it, so I just simply
11:09:30 10 thought that that, that the Court should take that into
11 consideration.

12 Now, Mr. Thompson at some point can look at
13 the case law and see whether or not that gives rise to a
14 motion to suppress, but -- and I know this is not a
11:09:40 15 suppression hearing, Your Honor, but it says what it
16 says.

17 And so I just thought that should be
18 brought to the Court's attention.

19 With regard to the rest of my proffer, Your
20 Honor, first of all, I would proffer that Mr. Ellis is a
21 lifelong resident of northern Ohio except for when he
22 went to college at the University of Louisville. After
23 that, he went to the University of Akron, but other than
24 that, he has lived in the Northern District of Ohio all
11:10:08 25 of his life.

1 So having been born in 1978, that would put
2 us about 42 years.

I would also proffer that he suffers from significant health issues. He has a bullet at the base of his spine. He has sciatic nerve problems, I think indicative of sciatica, which as the Court, I'm sure, knows, deals with nerve problems emitting from the hip to the legs, and also the ulnar nerve, which emits, I believe, from the shoulder down through the arms to the fingertips.

11 He indicated to the Pretrial Services
12 officer that he had those ailments, and the different
13 therapies and pain medications that he has been
14 prescribed for purposes of those ailments.

11:10:57 15 So we would proffer that information.

16 We would also proffer that if he is
17 released, he is still -- he is not the owner of that
18 residence, but he can still reside at that residence.

19 And to the extent that that might give the
11:11:13 20 Court pause, and this is more argument, but the
21 rigorousness of Pretrial Service supervision can take
22 care of any concerns with him living at that residence.

23 And that's what we have by way of proffer.
24 Anything else would be by way of argument, Your Honor.

11:11:36 25 And, Your Honor, I would just say one

1 correction with regard to the Pretrial Services report.

2 THE COURT: Yes, go ahead, counsel.

3 MR. FLEMING: Thank you, Your Honor.

4 THE COURT: Actually, before I -- before I

11:11:50 5 do that --

6 MR. FLEMING: Sure.

7 THE COURT: -- I'm going to turn to the
8 Pretrial Services representative to find out if there are
9 any changes, corrections or modifications to the Pretrial
11:11:57 10 Services report that has been provided to the Court and
11 to counsel.

12 THE PROBATION OFFICER: No, Judge, not at
13 this time.

14 THE COURT: All right. Thank you.

11:12:04 15 Attorney Fleming, go ahead.

16 MR. FLEMING: Just one correction with
17 regard to the Pretrial Services report.

18 On Page 4, it talks about Mr. Ellis's
19 substance abuse, and it makes the statement at the end of
20 that, before the -- before the part entitled substance
21 abuse history, it says, "He did not provide further
22 information regarding his substance abuse at the advice
23 of counsel," and I just want to clarify that.

24 What I did not allow and advised him not to
11:12:41 25 answer was a question that asked whether he was getting

1 drugs illegally.

2 That I said I would not allow him to
3 answer. I did not say that he would not answer questions
4 about simple use of drugs.

11:12:56 5 So I just wanted to clarify that. And to
6 the extent that the Pretrial Services officer -- Pretrial
7 Services officer misunderstood what I was saying, I
8 apologize if she did. But it was not that he could not
9 talk about substance abuse.

11:13:09 10 THE COURT: All right. Thank you for that
11 clarification, counsel.

12 MR. FLEMING: Thank you.

13 THE COURT: AUSA Pierce, before I receive
14 argument with respect to the matter of probable cause or,
11:13:40 15 Attorney Fleming, before I receive argument with respect
16 to the matter of probable cause, would either one of you
17 like to take a recess, or are you prepared to proceed?

18 MR. FLEMING: Your Honor, on behalf of
19 Mr. Ellis, I'm prepared to proceed. No problem.

11:13:53 20 THE COURT: Okay. Then go ahead, AUSA
21 Pierce.

22 MR. PIERCE: Your Honor, I think probable
23 cause in this case is pretty straightforward.

24 You know, a search warrant was executed at
11:14:03 25 638 127th Street. Mr. Ellis was found in the home. He's

1 flushing items, namely Percocets and some drugs that are
2 in the house.

3 More importantly, in his bedroom, which I
4 think we've established through Officer Kopchak's
11:14:18 5 testimony that it was his bedroom, his wallet is found,
6 the clothes are found. He's an extremely tall
7 individual, six-four, six-five. The clothes are there.

8 We saw the photograph of an extremely large
9 coat which had what appeared to be Fentanyl inside of it,
11:14:34 10 but more importantly the only charge we're here dealing
11 with right now is the felon in possession. It was found
12 within arm's reach, as Detective Kopchak stated. The
13 photograph shows that. It's right next to a bed. Right
14 next to the nightstand. And, of course, he's a felon who
11:14:48 15 is not supposed to be possessing said items.

16 That said, all of that, that it being in
17 his room, we've established, and that it's a firearm
18 within arm's reach of where he would be sleeping, he is
19 in possession of it. And as a felon, he's not allowed to
11:15:04 20 do that in violation of federal law.

21 So straightforward, that's probable cause.
22 That's the only charge we're dealing with. Of course, as
23 Your Honor pointed out, interstate commerce, we've
24 established that as well.

11:15:16 25 You know, these other arguments I think

1 Mr. Fleming has brought up and sort of articulated, I get
2 it. However, those are suppression issues, and they are
3 not relevant for purposes here today.

4 The other thing I would point out in that
11:15:28 5 Exhibit C, I -- Mr. Fleming states in Exhibit B that the
6 appeal was dismissed on April 22nd, 2020.

9 That's important because that case, the
10 Government, while I can't say what Cuyahoga County did,
11 however, they failed to do whatever they failed to do and
12 the Court dismissed their appeal. That case was still
13 technically open. They still had the ability to appeal
14 that decision, and the case wasn't ultimately dismissed
15 until May 13th.

24 So that case is still pending. So it's
11:16:30 25 still out there. It still could have been appealed and

1 it still was a possibility for Mr. Ellis. That said,
2 that probable cause was still generated while Mr. Ellis
3 was still -- has a case pending.

4 Now, ultimately, the warrant is signed and
5 sealed on May 14th afterwards, but it was submitted on
6 May 12th, so everything was established before that.

12 More importantly, the suppression hearing,
13 the three-day thing, we will deal with later. There is
14 Ohio case law on it and it's not important for today's
15 purposes.

16 As to detention, I would argue he should be
17 detained, Your Honor.

More importantly, if you go through his

1 criminal history, there's a long series of capias,
2 there's a long series of violations, and he has a violent
3 criminal history.

9 There was a -- a good break in there a
11:18:04 10 little bit in 2007, but most -- to 2015, but most of that
11 time was spent incarcerated.

12 And here we are back today as a felon in
13 possession.

14 All told, Your Honor, if you go through all
11:18:16 15 the factors and you read his history of substance abuse,
16 his lack of a job, the pending charges, his criminal
17 history, all told, Your Honor, I don't think he's a good
18 fit for, you know, going home, despite the fact that he
19 has been a lifelong resident of the area.

11:18:34 20 I don't think he is a risk of flight.
21 However, I do think there is a danger. He's a felon in
22 possession of a firearm, possession of narcotics. All
23 told with his criminal history, Your Honor, I don't think
24 he's a good fit.

11:18:53 25 THE COURT: Attorney Fleming.

1 MR. FLEMING: Your Honor, as to the issue
2 of probable cause as it pertains to the gun and
3 ammunition, we leave that to the Court's determination as
4 to whether the Government has satisfied the Court that
5 there is probable cause as to that.

With regard to detention, Your Honor, we do believe that there are conditions or combinations of conditions that could ensure that he's not a risk of flight and that he's not a danger to the community, and a few things I take issue with what the Government said.

11 First, that he has this long history of
12 capiases throughout his criminal history. Now, I
13 will -- I will acknowledge that his criminal history is
14 not flattering. And never is it flattering to even have
15 criminal history, so we will concede that.

16 But he had a 2015 case. No indication that
17 he ever had a problem coming to Court in that case. He
18 had a 2007 to 2008 case. No indication that he ever had
19 a problem in that case.

20 In 2008, he had -- he was indicted,
21 apparently according to that case, Judge, he was arrested
22 in 2006 but wasn't indicted until 2008, and you'll note
23 that the writs occurred not long after he was indicted.

24 That indicates to me that there was a
25 failure of service. It's not like he had appeared in

1 court and, you know, was given dates like pretrial,
2 trial, and then didn't show up. So I think the Court
3 should take that into consideration.

4 This just does not comport with the
5 Government's statement that he's got this long line of
6 capiases, long line of violations.

7 When you look at his -- he had another 2006
8 case and that was the rape, gross sexual imposition. He
9 was not -- that case was ultimately dismissed.

11:20:52 10 But in that case there was an allegation of
11 a violation, but whatever those allegations were, the
12 Court did not deem it sufficient to revoke his bond. So
13 that tends to indicate at least, Judge -- and we can't
14 second guess what the Judge was doing or why they were
11:21:11 15 doing it -- but it was not serious enough in the Judge's
16 opinion to warrant revocation of the bond.

17 He has a 2006 case, and I don't know if
18 those cases were related because they both have arrest
19 dates of 2006, so that should be noted. In July 11th of
11:21:34 2006, I should say.

1 Your Honor, according to the defendant -- and I proffer
2 this -- is that he got there late and the Judge was
3 upset. He was several minutes late, the Judge was ready
4 to go, and the Judge revoked his bond.

11:22:03 5 THE COURT: And, Attorney Fleming, which
6 case are you referring to?

7 MR. FLEMING: It's the first case with an
8 arrest date of 7/11/2006.

9 There are two cases that indicate an arrest
11:22:14 10 date of 7/11/2006.

11 THE COURT: All right. And that's Page 8
12 of the Pretrial Services report?

13 MR. FLEMING: That's absolutely correct,
14 Your Honor.

11:22:21 15 THE COURT: Okay.

16 MR. FLEMING: You see where it says, "Jury
17 impaneled and sworn"?

18 THE COURT: Yes.

19 MR. FLEMING: And then it starts to talk
11:22:26 20 about bond revocation.

21 And I'm simply pointing out, Your Honor,
22 that the defendant indicates that he was late, which, to
23 be very honest, Your Honor, that makes sense because if
24 you look further down in the disposition of that case, he
11:22:39 25 was found guilty on -- this entry was October 24th. He

1 was found guilty on October 29th. So soon after he was
2 arrested, the trial went forward. So that indicates the
3 defendant may be telling the truth about that.

4 Again the entry the page before, Your
11:22:58 5 Honor, Page 7 in the entry 9/19/2001, again we have a
6 situation where the failure to appear -- note that the
7 arrest date was September 19th, 2001, but the failure to
8 appear is in 2002.

9 Now, at that point about four months has
11:23:19 10 transpired and it's at the beginning of the case, which
11 tends to indicate that there was a failure of service yet
12 again.

13 There are no capiases in the middle or at
14 the end of that case. So again, I'm not seeing here any
11:23:35 15 real pattern of capiases or failures to appear.

16 He does have a PV hearing in the next case
17 up, starts on Page 6. He does get a sentence of six
18 months in jail. I do not know what the nature of the
19 violation was.

20 I think it was for new conduct because it
21 happened in 2002, and 2002 is when he picks up this other
22 fleeing and eluding case, so that does appear to be a
23 concern, but I would note, Your Honor, that was 18 years
24 ago. So Mr. Ellis was somewhere in the vicinity of 20
11:24:15 25 years old.

1 Next case up, 1999, again bench warrant,
2 but it's at the beginning of the case -- three months
3 after he was originally arrested -- tends to indicate a
4 failure in service.

11:24:29 5 And before that, on Page 5 we do have a
6 capias, but that was recalled. So, you know, he didn't
7 receive any sentence as a result of the capias or his
8 bond wasn't revoked, so apparently that must have been
9 explained away.

11:24:51 10 And in 1996, the next case above, when he
11 was 18, he had a writ which was recalled. He was not
12 sanctioned for that, so it must have been explained away.

13 So, Your Honor, again, I don't see a
14 history of failing to go to Court. I don't see a history
15 there. To the extent there are capias, they appear to
16 have been resolved. And while he does have the one
17 violation of probation, that was 18 years ago.

11:25:49 25 Now, the other thing, Your Honor, the Court

1 always has a middle ground because the Court may -- I
2 could understand -- it's a gun case, he's got a prior
3 history, it's not flattering. The Court may have some
4 pause about him simply being at home.

11:26:07 5 So what I suggest to the Court is that in
6 lieu of releasing him directly on bond, we all know that
7 there are -- there is apparently a drug problem because
8 we know from the U.S. Marshals that when he was arrested,
9 when he was taken into their custody, he was apparently
11:26:24 10 going through withdrawal. That is a clear indication of
11 a drug problem or at least some form of addiction.

12 This Court can put him in inpatient
13 treatment, to the extent that it's available, and do that
14 for a term of 30 or 60 days. And this Court can use that
11:26:43 15 as the determiner in terms of whether or not he should be
16 continued on bond because obviously the Court would have
17 to do that on bond, but put him in inpatient treatment,
18 get him the treatment he needs. He knows he needs
19 treatment. And if he does well during that period of
20 time, that would inform the Court's judgment as to
21 whether he should be released or kept in jail.

22 If he has problems, if he tests positive
23 for drugs that he's not supposed to have, if he leaves
24 and he's not supposed to, then obviously that would
11:27:16 25 inform the Court's judgment, too. And Mr. Ellis is

1 well-aware of what's going to happen if any of those
2 things happen: He's going to jail.

3 The only thing I would ask, Your Honor, is
4 the Court, in giving him inpatient treatment, if the
11:27:31 5 Court decides to do that, that the Court -- that he be
6 made available for his other medical treatments because
7 the nerve problems, sounds like they are serious. He
8 gets nerve blocks every so often for the pain. He was
9 being given pain medication.

11:27:46 10 He had a car accident not too long ago that
11 just exacerbated the problems he already had, and I
12 believe created more problems with his back. So he
13 appears to be in a lot of pain, quite a bit, and so I'd
14 ask the Court, to the extent that the Court does either
11:28:03 15 release him on bond with conditions or put him in some
16 form of inpatient treatment, that medical treatment be
17 made available to him so he can get the other treatment
18 that he needs.

19 And that's what we have, Your Honor.

11:28:16 20 THE COURT: Thank you, counsel.

21 Counsel and Mr. Ellis, the initial purpose
22 of today's proceeding was to conduct a preliminary
23 hearing and determine whether probable cause in fact
24 exists to support the charges alleged against Mr. Ellis.

11:30:23 25 Having considered the testimony of Task

1 Force Officer Kopchak, the Court has considered not only
2 the direct but the cross-examination of the witness, and
3 makes the initial finding that the testimony is credible.

4 Having made the initial finding that the
11:30:59 5 testimony provided is credible, the Court's further
6 considered the information proffered by counsel for the
7 defense as well as counsel for the United States with
8 respect to the matter of probable cause.

9 The Court will also note that a number of
11:31:21 10 the issues that defense raised, as the defense pointed
11 out, would be issues that may be germane to a motion to
12 suppress, but are not determinative to whether, in fact,
13 probable cause exists to support the allegations alleged
14 against Mr. Ellis.

11:31:46 15 Based upon the -- all the information
16 before me, it's this Court's finding that there is
17 sufficient evidence to establish probable cause to
18 believe that a crime was as alleged in the criminal
19 complaint, that being a felon in possession of a firearm,
20 and the Court further finds that the evidence establishes
21 probable cause that the defendant committed the alleged
22 offense.

23 Having made that initial determination,
24 it's this Court's finding that the matter is bound over
11:32:45 25 to the grand jury for further proceedings.

At this time, the Court further finds that pursuant to the amended general order 2020-05, 2020-05-2 and the most recent general order 2020-08 issued by the Chief Judge for the Northern District of Ohio, the Court finds that the speedy trial clock under 18, U.S.C., Section 3161(b) is extended to 30 days after the grand jury is ordered to reconvene its normal operations.

And such time is excluded for Speedy Trial Act purposes as provided by 18, U.S.C., Section 3161(b) and 18, U.S.C., Section 3164 pursuant to the Court's ends of justice determination under 18, U.S.C., Section 3161(h) (7) (A), (h) (7) (B) (i) and (h) (7) (B) (iii).

The Court further finds that the ends of justice served by a continuance outweigh the best interests of the public and defendant in the speedy presentation of the case to the grand jury because failure to grant such a continuance would deny counsel for both sides the reasonable time necessary for effective preparation taking into account the exercise of due diligence.

Now, with respect to the Government's oral motion for pretrial detention, there is no statutory presumption in favor of detention in this case based upon the charges alleged against Mr. Ellis.

Therefore, the Court considers the evidence

1 proffered as well as the testimony of Officer Kopchak and
2 the arguments of counsel.

11:35:15 10 As noted, the Court has considered the
11 Pretrial Services report as well as its recommendation.

12 I'll note for the record that the
13 Court -- the Pretrial Services recommendation to the
14 Court is that there are no conditions or combinations of
15 conditions that would reasonably assure the appearance of
16 the defendant as required and the safety of the
17 community. Therefore, it's the Pretrial Services'
18 recommendation to the Court that the Court consider
19 further detaining the defendant.

11:36:32 20 Counsel and Mr. Ellis, at this time the
11 Court's going to take the matter for pretrial detention
12 under advisement and, if necessary, counsel and
13 Mr. Ellis, the Court will schedule a further hearing on
14 the matter of pretrial detention should I deem it
15 necessary to have a further hearing, or the Court may

1 issue a written decision memorializing my determination
2 on the Government's motion for pretrial detention.

3 At this time, however, the Court is going
4 to take the matter under advisement, and to be clear, the
11:37:11 5 previous order of pretrial detention of Mr. Ellis shall
6 remain in effect until this Court renders further
7 determination with respect to the Government's motion for
8 pretrial detention.

9 AUSA Pierce, is there anything further for
11:37:29 10 the Court to consider at this time?

11 MR. PIERCE: Your Honor, the only thing I
12 would note -- and I actually just forwarded this to
13 Mr. Fleming; it should be in his inbox -- is that Ohio
14 Rule of Criminal Procedure 45(a) talks about tolling and
11:37:44 15 timing of when a search warrant can be executed, and it
16 specifically states that "Weekends, when the time is
17 given that it's less than a week, i.e. three days, that
18 weekends are specifically not included, meaning the
19 weekend days do not count for that tolling."

20 I just wanted to point that out.

21 I just forwarded it to Mr. Fleming.

22 THE COURT: Attorney Fleming, anything
23 further for the Court to consider at this time?

24 MR. FLEMING: Nothing further on behalf of
11:38:14 25 the defense, Your Honor.

1 THE COURT: All right. Then at this time
2 the Court's going to adjourn this hearing and, as noted,
3 take the matter under advisement.

4 MR. FLEMING: Thank you, Your Honor.

11:38:27 5 THE COURT: Thank you, everyone.

6 MR. FLEMING: Take care.

7 (Proceedings concluded at 11:38 a.m.)

8 | - - - -

9 | CERTIFICATE

10 I certify that the foregoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.

13

14

15

16

/s/Susan Trischan

17

18 Certified Realtime Reporter

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I N D E X

WITNESSES:

PAGE

4	DIRECT EXAMINATION OF DONALD KOPCHAK	10
5	BY MR. PIERCE	
6	CROSS-EXAMINATION OF DONALD KOPCHAK	27
7	BY MR. FLEMING	
8	REDIRECT EXAMINATION OF DONALD KOPCHAK	46
9	BY MR. PIERCE	

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